IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1728 of 2002
With
CIVIL APPLICATION No. 6098 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
KRISHNA LALJI LUHAR & 4 - Defendant(s)

==========

Appearance :
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR BHARAT JANI for Defendant(s) : 1 - 3.
NOTICE NOT RECD BACK for Defendant(s) : 4,
DELETED for Defendant(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Though the Civil Application for stay along with First Appeal were placed before this Court for further orders, as per the joint request of the learned advocates appearing for the parties, we have taken up the First Appeal itself for final hearing and disposal.

2. The appeal arises out of a judgment and award dated 13.2.2002 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in MAC Petition No.977 of 1999.

3. Opponent Nos.1 to 3 herein had approached the Claims Tribunal seeking compensation for a sum of Rs.4 lakhs on account of death of one Lalji Antana Bengali in a vehicular accident which took place on 3.4.1999. These opponents-original claimants claim to be heirs of deceased Lalji Antana Bengali.

4. The Claims Tribunal in the impugned judgment and award found that deceased Lalji Antana Bengali had died in a vehicular accident which took place on 3.4.1999. The Claims Tribunal came to the conclusion that the deceased was knocked down by a truck which was insured by the present appellant-Insurance Co. The Tribunal found that the accident was caused due

to sole negligence on the part of the truck driver. With respect to quantum of compensation, the Tribunal came to the conclusion that the income of the deceased at the time of death could be assessed at Rs.18,000/- per annum. Deducting one-third of that for his personal expenditure, the Tribunal worked out dependency benefit of the heirs of the deceased at Rs.12,000/- per annum. The Tribunal looking to the age of the deceased, which was stated to be 40 years at the time of accident, adopted the multiplier of 15 and worked out the dependency loss to the family at Rs.1,80,000/-. The conventional amount of Rs.10,000/- towards loss of expectation of life was also granted. The Tribunal also granted Rs.5,000/- for incidental expenses and awarded a total sum of Rs.1,95,000/- as compensation.

5. With respect to the identity of the deceased and his relation with the claimants however, the Tribunal found insufficient evidence on record. The Tribunal, therefore, made the following observations in this regard :-

> “On behalf of the insurance company, learned advocate Mr Bhatt has submitted that there is a discrepancy in the full name of the deceased. As per the evidence of the applicant Exh.30, the deceased Lalji was his father and as per the cross-examination the full name of the deceased was Lalji Kashinath Luhar. Even in para 4 of his

> evidence he has stated that the name of his grand-father is Kashinath alias Antana and his father was writing his surname as Bengali. Therefore, in reality whether deceased was Lalji Kashinath Luhar or was Lalji Kashinath alias Antana and/or Bengali remain unexplained. There is no piece of evidence in support of this. Therefore, the identity of the deceased is to be established first."

6. Having thus found that it is not clear whether the claimants are heirs of deceased Lalji Antana Bengali or not, after passing an award of Rs.1,95,000/-, the Tribunal provided that after deducting deficit court fees, if any, and after producing authenticate evidence justifying the identity of the deceased Lalji Antana Bengali, 15% of the total amount be paid to the applicants by an account payee cheque drawn in the joint name of the applicants after proper verification.

7. It can thus be seen that with respect to the relation of the claimants with the deceased, the Tribunal had not come to any definite conclusion and had left the said question open.

8. While admitting this appeal, this Court had granted stay in favour of the appellant-Insurance Co. upon condition that the entire amount as awarded by

the Claims Tribunal is deposited before this Court. It is jointly stated that accordingly the appellant-Insurance Co. has deposited the entire amount. However, this Court has not permitted any disbursement from the said amount primarily on account of question of identity of the claimants and their relation with the deceased.

9. With this background in mind, we had heard learned advocates appearing for the parties.

10. Learned advocate Shri PV Nanavati appearing with Shri Chirayu Mehta for the appellant-Insurance Co. opposed the award and submitted that when the identity of the claimants was not fully established before the Tribunal, it was not appropriate on behalf of the Claims Tribunal to draw any award in favour of the claimants. He submitted that the award is otherwise also erroneous and calls for interference.

11. On the other hand, learned advocate Shri BG Jani appearing with Ms Mohini Bhavsar for the original claimants-opponent Nos.1 to 3 supported the judgment under challenge. He submitted that the Claims Tribunal has drawn an award which is just and proper calling for no interference.

12. Having thus heard the learned advocates, we find that in so far as the accident which occurred on

3.4.1999 causing death of Lalji Antana Bengali is concerned, there is no serious dispute. By a speeding truck, the said deceased was knocked down while he was going on his bicycle. The Tribunal has discussed the evidence on record and come to the conclusion that the driver of the truck was negligent in causing the accident. Having examined the evidence on record, we find no reason to take a different view.

13. With respect to the quantum of compensation also, we find that the Tribunal has come to a just figure calling for no interference by this Court. The assessment of income of the deceased and overall compensation computed being just and reasonable, in this regard also, no interference is necessary.

14. We, however, find that the Tribunal had not taken a final decision with respect to the identity of the deceased vis-a-vis the claimants. As noted earlier, the Tribunal found that there is some ambiguity regarding the connection of the claimants with the deceased person. If that is so, the Tribunal ought not to have proceeded to pass the final award leaving the question undecided to be concluded at a later point of time.

15. We find that there is insufficient evidence on record to permit us to conclude this question in the present appeal. It would, therefore, be necessary

and in the interest of all concerned to remand the proceedings to the Claims Tribunal permitting the original claimants to lead fresh evidence if they so desire and come to a definite finding with respect to their connection with the deceased person. For the above purpose, while upholding all findings of the Tribunal with respect to the accident, negligence of the truck driver in causing the accident and computation of compensation, the proceedings are remanded to the Claims Tribunal for the limited purpose of ascertaining the relation of the claimants with the deceased person and pass fresh order in accordance with law. For the above purpose, while maintaining the award in all other respects, only for the limited purpose of ascertaining the locus of the claimants, the proceedings are remanded to the Claims Tribunal. The claimants would have time upto 31st December 2007 to produce evidence in this regard and to request the Tribunal to pass fresh orders in accordance with law.

16. Upon conclusion of the remanded proceedings, the Tribunal shall pass necessary order regarding investment and disbursement as found necessary. The amount deposited by the appellant-Insurance Co. before this Court pursuant to orders passed in Civil Application No.6098 of 2002 shall be transmitted to the Claims Tribunal upon maturity of the fixed deposits, to be disbursed after fresh orders as provided hereinabove are passed. It is clarified that

if the claimants fail to produce any evidence within the time permitted hereinabove, the Claims Tribunal shall permit the appellant-Insurance Co. to withdraw the amount deposited before this Court which is being transmitted under this order.

17. With these directions, the First Appeal is partially allowed and disposed of. In view of final disposal of the First Appeal itself, the Civil Application for stay does not survive and the same is disposed of having become infructuous.

Direct service of this judgment is permitted to opponent Nos.1 to 3.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-